At the hearing before an Appeals Board consisting of the Commissioner of Appeals it was common ground that at the relevant date, March 22, 1973, the property market was very active. Land values had begun to improve in 1970 and prices rose gradually until the end of 1972 when the rise in prices accelerated and reached its peak in September 1973. After that there was a levelling off of prices.

It was also common ground that the Master Plan zoning of a property in Singapore is decisive in assessing its value, that there was at the material date a shortage of good warehouses and that in terms of property values "warehouses" zoning is superior to "residential" zoning.

The Commissioner after hearing expert evidence from two qualified land valuers increased the award to $348,120 which reflects a value of $60 per sq. ft. The expert, Mr. Cheong Thiam Siew, who gave evidence on behalf of the owner relied on recent sales of comparable properties. One such sale was on January 25, 1973 of a piece of property with an area of 16,130 sq. ft. at the price of $75 per sq. ft. on which were two pre-war single storey godowns used as warehouses and zoned in the Master Plan as "commercial". Another sale relied on was on January 29, 1974 of No. 10 Jiak Kim Street, a single storey pre-war building on land with an area of 28,117 sq. ft. at the price of $85.35 per sq. ft. This property is zoned "warehouse" in the Master Plan. Yet another sale relied on was on May 11, 1973 of No. 410 Havelock Road, a single storey godown on land zoned "warehouse" with an area of 16,000 sq. ft. at the price of $73.76 per sq. ft. The last transaction relied on was of a warehouse on land zoned "residential" with an area of 6,572 sq. ft. which was valued by the Commissioner of Estate Duties for estate duty purposes at $55 per sq. ft. as at March 15, 1974.

The other expert, Mr. Yap Eng Bok, who gave evidence on behalf of the collector relied entirely on one comparable sale which was of a row of godowns with an area of 52,000 sq. ft. known as Nos. 46 to 62 Palmer Road. This property was sold on January 5, 1973 at the price of $34.60 per sq. ft. One of the godowns was tenanted and subject to the Control of Rent Act. It was a sale by a subsidiary company to the parent company and at book value and not at the market price. It was clearly not an arms-length sale. Mr. Yap disregarded the sales of No. 410 Havelock Road on May 11, 1973 and of No. 10 Jiak Kim Street on January 29, 1974 because they took place after March 22, 1973, the date of the acquisition.

The Commissioner of Appeals rejected the submission made on behalf of the collector that all sales which took place after the relevant date, March 22, 1973 could not be taken into consideration by the Appeals Board in arriving at the market value at the relevant date of the land acquired. He also rejected another submission that the Appeals Board could not in law take into consideration in arriving at the market value of the land acquired a valuation of the Commissioner of Estate Duties for estate duty purposes of a comparable piece of property.

The collector appealed to this court and during the argument before us similar submissions were advanced on behalf of the collector but counsel for the collector was unable to refer to any authority or give any reasons in support of these submissions. We rejected these submissions. In our judgment the Commissioners of Appeal's reasons for rejecting these submissions are correct. They are to be found at pages 9 to 10 of his written Decision ([1977] 2 M.L.J. at 102) and read as follows:—

> "Counsel for the respondent submits that all sales which took place after the relevant date should not be taken into consideration by the Board in this Appeal; that the Board must place itself in the place of the Collector as at the material date and therefore the Board must disregard the comparables cited by Mr. Cheong Thiam Siew because the sales of those properties on which he relies and the valuation of 27 Sibu Road by the Commissioner of Estate Duties, all took place after the relevant date, i.e. March 22, 1973. I am unable to accept this submission. There is no authority for it. Appeals to the Appeals Board under the Land Acquisition Act are by way of a re-hearing and ... the parties to the appeal are entitled to put before the Board any fresh evidence that may have come to light after the relevant date and which will assist the Board in determining the compensation to be paid to the land owner for the acquisition of his land by the Government. In my judgment any sale of comparable property taking place within a reasonable time of the relevant date, both before and after, can be considered after making the necessary adjustments for all the relevant factors. For example, in this appeal, the respondent's expert witness, Mr. Yap relies on the sale of the Palmer Road property which took place on January 5, 1973 i.e. about two and a half months before the relevant date. I see no reason why this Board, in determining the proper compensation to be paid for the acquisition of the subject property, cannot take into consideration the sale of 410 Havelock Road which took place on May 11, 1973 i.e. 48 days after the relevant date, provided of course, the Board takes cognizance of all the distinguishing factors and makes the necessary adjustments. In my judgment it is entirely erroneous to suggest that the Board cannot consider any sale which took place after the relevant date."

Accordingly, we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Drew & Napier.*

K.E. HILBORNE & ORS. v. NEW CHING KEE

[C.A. (Wee Chong Jin C.J., Chua and D'Cotta JJ.) October 16, 1978]

[Singapore — Civil Appeal No. 23 of 1978]

Legal Profession — Advocates and solicitors — Professional negligence — Action against solicitors for breach of implied term of engagement — Delay in filing Writ of Summons — File relating to matter misplaced — Solicitors negligent — Appeal.

Torts — Negligence — Professional negligence — Solicitors' appeal.

The appellants in this case sought to appeal against the lower court's judgment (see [1978] 2 M.L.J. 48) in awarding damages against them as solicitors for negligence and breach of contract to exercise due professional skill and care while acting for the respondent/client in his claim against the rider of a motor scooter for personal injuries which the respondent sustained. The appellants were found negligent by the lower court in failing to serve the Writ of Summons on the other party before the date on which the action became statute-barred. The appellants had submitted that the reason for the delay in filing the Writ was that the file relating to the plaintiff's matter had been misplaced in their office.

In the present appeal, the appellants contended that because they applied to renew the Writ before it expired, the delay in serving the Writ from the date of its issue on August 7, 1973 to July 31, 1974, two days after the missing file was found, could not be taken into consideration in deciding whether or not they were liable to their client in negligence or breach of contract.

Held: (1) the appeal had no chance of success. It prolonged the suffering of the client. It was hoped that an appeal of this nature would not come before the courts again;

(2) the position of a plaintiff who had been deprived of his cause of action by failure to serve the Writ in time was the same as that of a plaintiff who had been deprived of his cause of action for want of prosecution;

(3) in this case it was clear that the client had been deprived of his cause of action by the delay of his solicitors and therefore was entitled to recover damages from them.

[**Editorial Note:** See footnote at p. 105. In this case the Court of Appeal has granted leave to appeal to the Privy Council.]

Case referred to:-

(1) *Allen* v. *Sir Alfred McAlpine & Sons* [1968] 1 All E.R. 543, 547 & 553.

COURT OF APPEAL.

K.E. Hilborne for the appellants.

Karuppan Chettiar for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): This is an appeal in an action by a client against his solicitors for damages for negligence and breach of contract in failing to exercise due professional skill and care while acting for the client in his claim against the rider of a motor scooter for personal injuries suffered by the client.

The client, New Ching Kee, is a farmer who rears pigs and poultry. He was run into by a motor scooter on November 18, 1970 and suffered multiple abrasions and a fracture of the shaft of the right humerus. The fracture united but with a deformity and the abrasions healed leaving behind six small keloids over the back of one elbow. It is not disputed that the rider of the motor scooter was solely to blame for the accident.

In late November, 1970 the farmer engaged a firm of solicitors, Messrs. Hilborne & Co. to act for him in making a claim and, if necessary, taking proceedings for damages against the rider of the motor scooter. He was attended to by Lee Hian Weng, who described himself as the managing clerk of Hilborne & Co. and who over a period of almost five years from November, 1970 to September, 1975 attended on him. No qualified advocate and solicitor ever attended on the client.

The first letter written by Hilborne & Co. was ten months after they had been engaged to act for the client. It was dated August 31, 1971 and addressed to the insurers of the motor scooter asking for confirmation whether or not they were the insurers and stating that Hilborne & Co. were instructed to act for the person injured in an accident involving the motor scooter to claim damages. Letters were exchanged of which one was a letter dated November 29, 1971 from Hilborne & Co. suggesting as appropriate quantum of damages to be $13,000 made up of $3,000 "damages for the injury to the arm" and $10,000 "loss of earnings" as he had to employ an extra hand at a cost of $120 per month to do the work which he used to do himself. This letter evoked no response from the insurers but it was not until August 7, 1973 that Hilborne & Co. caused a Writ to be issued naming the rider of the motor scooter, Lim Ser Hock, as defendant claiming damages for negligence and on August 8, 1973 they sent a notice to the insurers of the commencement of the running-down action.

On August 15, 1973 they obtained an appointment with the High Court process server to serve the Writ on August 22, 1973 and notified their client to be at their office to accompany the process server to serve the Writ on the defendant, Lim Ser Hock. However, on August 21, 1973 they received a letter dated August 17, 1973 from Messrs. Battenberg & Talma, solicitors for the insurers requesting them to withhold further proceedings in the action until all the facts had been assembled and asking for proof of the $10,000 claim for loss of earnings. Accordingly, Hilborne & Co. did not proceed to serve the Writ.

On October 23, 1973 the insurers' solicitors, not having had a reply to their letter of August 17 wrote to Hilborne & Co. asking for particulars of the $10,000 loss of earnings claim and accepting the assessment of $3,000 for the arm injury. Not receiving a reply they wrote again on November 1, 1973 stating they had completed their investigations and enquiring whether an equal apportionment of liability was acceptable. There was still no reply to this letter. The reason, according to the managing clerk of Hilborne & Co., was that soon after receiving the first letter dated August 17, 1973 from the insurers' solicitors the relevant file could not be found as around that time the firm was moving to a new office. Be that as it may, those three letters to them were never answered nor did they keep the client informed of their contents or of the fact that the relevant file was missing.

The Writ, having been issued on August 7, 1973, would expire twelve months later on August 6, 1974 unless renewed by leave of the court. No attempt was ever made by Hilborne & Co. to re-construct the contents of the missing file, to serve the Writ or to take their client's instructions on the offer by the insurers' solicitors. The missing file was discovered on July 29, 1974 i.e. 8 days before the expiry of the Writ.

After finding the missing file they elected to apply to court to renew the life of the Writ which they did by filing the application on July 31, 1974. It was an *ex parte* application before the Registrar which was granted. Notwithstanding the already long delay, the client was not informed and no arrangements were made to serve the renewed Writ until months later on November 20, 1974. Thereafter, after three unsuccessful attempts to serve the renewed Writ, it was eventually served on the insurers' solicitors who had written on instructions stating that they would accept service.

The next stage in this deplorable matter began with an application by the defendant in the running-down action applying to set aside the renewal of the Writ. The application came before the Registrar who set aside the renewal. Hilborne & Co., without taking instructions or even informing the client of the situation, appealed on behalf of the client against the Registrar's decision. Chua J. dismissed the appeal with costs which when taxed amounted to $2,659.20. Again, the client was not informed of the result of

the appeal and that an order of costs had been made against him. To make matters worse, he first knew of what had happened from a letter to him by the insurers' solicitors asking for payment of $2,659.20 as the taxed costs. This letter was written to the client because Hilborne & Co. had written to the insurers' solicitors that they were no longer acting for their client in the proceedings. They had washed their hands of the matter without even informing their client of his position which was that he had been barred by limitation from pursuing his claim in respect of the personal injuries he had suffered from the accident and had been saddled with a final court order to pay costs amounting to $2,659.20. Fortunately for him, he consulted another firm of solicitors who commenced the present action on his behalf against his former solicitors, naming the partners as defendants.*

In the present action the plaintiff, the respondent in this appeal, claimed damages for having lost all prospects of receiving damages for personal injuries suffered arising out of the accident with a motor scooter on November 18, 1970 and for the sum of $2,659.20 being the taxed costs claimed against him by Lim Ser Hock under an order of court in the proceedings relating to the renewal of the Writ. The High Court gave judgment for the plaintiff/respondent and assessed the damages he would have recovered in the running-down action at $8,796 and $3,315.20 being the taxed costs with interest thereon which the plaintiff/respondent was liable to pay to Lim Ser Hock.

At the conclusion of the argument, we dismissed the appeal of the partners of Hilborne & Co. Anyone hearing the facts we have just outlined would inevitably, as the trial judge did and as we did, come to the conclusion that the delay of Hilborne & Co. in getting on with their client's claim was inexcusable and that the complete inaction on their part to reconstruct the material contents of the missing file was also inexcusable. That being the case what is the applicable law? The law is stated by Lord Denning M.R. in *Allen* v. *Sir Alfred McAlpine & Sons*[1] a case which we commend be read and re-read by all practising members of the legal profession. At page 547 Lord Denning said:—

"Whenever a solicitor, by his inexcusable delay, deprives a client of his cause of action, the client can claim damages against him; as, for instance when a solicitor does not renew a writ in time, or serve it in time, or does not renew it properly."

In the present case Hilborne & Co. failed to serve the Writ in time and the client has been deprived of his cause of action. They contend that because they applied to renew the Writ before it expired, the delay in serving the Writ from the date of its issue on August 7, 1973 to July 31, 1974, two days after the missing file was found, could not be taken into consideration in deciding whether or not they were liable to their client in negligence or breach of contract. That contention has no foundation in law.

In the present case it is clear that the client had been deprived of his cause of action by the delay of his solicitors, Hilborne & Co. By their delay the Writ had expired and the client's claim was barred by limitation. In deciding whether or not the delay was the fault of Hilborne & Co., was "inexcusable delay", in the words of Lord Denning, all the acts or omissions on their part must necessarily be taken into consideration. They did nothing at all until the missing file surfaced. That was clearly inexcusable. They were at fault. They were to blame.

We continue quoting Lord Denning. He said, immediately after the passage we have quoted, these words:—

"We have seen, I regret to say, several such cases lately. Not a few are legally aided. In all of them the solicitors have, I believe, been quick to compensate the suffering client; or at least their insurers have. So the wrong done by the delay has been remedied as much as can be. I hope that this will always be done."

Not only was this not done in the present case, the suffering client, unknown to him, was saddled with a debt of $2,659.20 taxed costs against him. Instead of compensating him, Hilborne & Co. resisted his claim against them. He succeeded in the High Court. That was not sufficient suffering for the client. They piled on his suffering by appealing to this court. Mr. Hilborne on behalf of himself and his two partners of Hilborne & Co. advanced arguments which in our opinion ignored the plain facts and were devoid of any substance in law. In disputing the trial judge's assessment of $6,000 for the fracture of the shaft of the right humerus he contended that it was wrong because the parties in the "accident" claim had agreed to the figure of $3,000. That contention was totally unsupported by the facts. The client had not agreed, indeed it is apparent that he was never told the amount his solicitors had put forward as the proper compensation for that injury.

Another contention advanced by Mr. Hilborne was that the trial judge's basis of the award of $2,684 as special damages was wrong. The argument was that that sum was claimed as special damages and should have been disallowed as the claim was essentially one for loss of profits which the client had failed to prove. Again this contention totally ignores the evidence, which the trial judge accepted, that as a consequence of his injuries, the client engaged help to work on his farm, work which but for the injuries the client himself had normally done.

In our opinion the appeal had no chance of success at all. It prolonged the suffering of the client. We can only hope an appeal of this nature will not come before the courts again. The position of a plaintiff who has been deprived of his cause of action by failure to serve the writ in time is the same as that of a plantiff who has been deprived of his cause of action for want of prosecution. Although the case of *Allen* v. *Sir Alfred McAlpine & Sons*, *supra*, was a case relating to dismissal for want of prosecution, the observations of that court are pertinent to the present case and we adopt the words of Diplock L.J. (as he then was) at page 553 which read:—

* M/s Hilborne & Co. drew our attention to page 135 of the Record of Appeal. It appears that on September 11, 1975, the appellants wrote to the respondent stating that they did not think they were negligent and that the respondent should consult another firm of solicitors. That letter was however handed to the respondent when he went to see Mr. Lee of M/s Hilborne & Co. *Mng. Ed. M.L.J.*

"As regards the position of the plaintiff, it is of course unfortunate that he, though personally blameless, should suffer for the default of his agent; but if he does, he is not without a remedy, for unless he himself has caused or consented to the delay which has resulted in his action being dismissed for want of prosecution, he will have a right of action against his solicitor for negligence.... If the action is dismissed the plaintiff, in a subsequent action for negligence against his solicitor can recover, in addition to the costs of the action which has been dismissed, compensation for the loss of his chances of recovering damages against the defendant in the dismissed action had it been properly conducted on his behalf by the solicitor."

It was for all these reasons that we dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Murphy & Dunbar.*

NASSIM v. COLLECTOR OF LAND REVENUE

[Appeals Board (Choor Singh J., Commissioner of Appeals, Sat Pal Khattar and A.M. Cherian) September 1, 1978]

[Singapore — Appeal No. AB41 of 1972]

Land Acquisition — Rural land — Appeal from award of Collector of Land Revenue — Land containing substantial quantity of sand — Royalty method of determining value — Potential growth factor — Land Acquisition Act (Cap. 272), s. 10.

This was an appeal from an award by the Collector of Land Revenue for the acquisition of a large interior plot of land containing an area over 53 acres. The Collector awarded 20.6 cts per sq. ft. or $477,567. In his grounds of award the Collector made no reference to sand being found on the property. At the hearing of the appeal it was conceded that there was a substantial quantity of sand on the land. The main issue on the appeal was the value to be attributed to the land arising from its sand quarrying potential.

Held: (1) the royalty method of determining the value of the sand bearing potential of the land was relevant and in the circumstances a 20% tribute by way of royalty to the owner seemed to be a realistic basis of his likely income. A royalty of 20% would on the basis of the selling price of $3.50 per cubic yard yield to the owner 70 cts per cubic yard;

(2) as the acquisition took place in 1971, the potential growth factor of the land should also be taken into account. Taking into account all the relevant factors and giving the best consideration to the evidence and submissions in this case, an added value of 9 cts per sq. foot for the potential element would be reasonable;

(3) the final figure of 55 cts per sq. ft. so arrived at for the acquired land would be a realistic value as at June 9, 1971 and the award should therefore be increased to $1,271,271.65.

APPEALS BOARD (Land Acquisition).

K.E. Hilborne for the appellant.

Abdul Wahab Ghows, Solicitor-General (*Miss Tan Peck Cheng* and *Miss Tan Swee Choo* with him) for the respondent.

Cur. Adv. Vult.

Choor Singh J. (Commissioner of Appeals): This is an appeal against the award of $477,567 by the Collector of Land Revenue for the acquisition by Government of Lot 119 of Mukim XXX in the District of Teban containing an area of 53 acres 0 roods 10 poles.

The Declaration acquiring the property was published in the *Government Gazette Extraordinary* dated June 9, 1971 and in determining the proper compensation to be paid to the land owner, the value of the land must be assessed as at June 9, 1971.

The property is zoned "Rural" in the Master Plan and the land is held under a statutory land grant issued in 1963.

The subject land is a very large interior plot located off Jalan Hong Keng and is about 1½ miles from Tampines Road. It has frontage to a State Reserve. The land is undulating and some parts of the land were at the date of the acquisition covered with old rubber trees. An unmetalled road cuts across the land and is said to have been in use by the owners of the surrounding plots of land for well over 50 years. At the date of acquisition there were 13 squatter huts on the land of which five enjoyed the protection of the Control of Rent Act.

At the enquiry held on July 9, 1971 before the Collector of Land Revenue under the provisions of section 10 of the Land Acquisition Act (Cap. 272) a claim for compensation in the sum of $2,542,000 ($1.10 p.s.f.) was submitted for the compulsory acquisition of the subject land. The Collector awarded $477,567 (20.6 cents p.s.f.) on June 29, 1972. The appellant being dissatisfied with the Collector's award has appealed to this Board.

In his Grounds of Award filed by the Collector the Collector made no reference at all to sand being found on the property. At the hearing of the appeal before us, it is now conceded that there is a substantial quantity of sand on the subject land. Indeed, the main issue in this appeal is as to the quantity of sand that can be extracted from the subject property and its value as at the date of acquisition.

On behalf of the appellant it is contended that on the basis that if all the squatters are removed, there is extractable sand amounting to about 1.975 million cu. yds. On the other hand the Collector maintains that the amount of extractable sand is only 1.637 million cu. yds. If the five squatters are moved to the fringe of the land and each given 10,000 sq. ft. irrespective of the area presently occupied by them and the other eight squatters removed altogether and quarrying is carried out outside the 50 yard limit as required by the present regulations the amount of sand extractable is only 1.564 million cu. yds. according to the respondent.

Then there is the second issue as to the price which the extractable sand could have fetched at the date of acquisition and the worth of the sand bearing land to the owner in 1971.

The following points are agreed between the parties:—

(i) the land had extractable sand;

(ii) the price of sand in 1971 was $3.50 per cu. yd.;

(iii) on the agreed basis of 5 cu. yds. per lorry and 100 lorry loads working 300 days per year the amount of sand which the land would yield would be 150,000 cu. yds. per year;

(iv) that silt which is a by-produce of sand quarrying has no commercial value; and